

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 7, 2006

Cancellation No. 92045000

Bass Pro Trademarks, L.L.C.

v.

Sportsman's Warehouse, Inc.

Cindy B. Greenbaum, Attorney:

On March 29, 2006, approximately one month before the close of discovery, petitioner filed a motion for leave to amend its petition for cancellation. The parties have fully briefed the issue, and the Board has considered petitioner's reply. See Trademark Rule 2.127(a).

Once a responsive pleading is served, FRCP 15(a) allows a moving party to amend its pleading only upon written consent of every adverse party, or by leave of the Board. Leave to amend is freely given when justice so requires. See FRCP 15(a). Accordingly, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entering the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. See, e.g., *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993), and TBMP §507.02. This is so even where, as here, a plaintiff seeks

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to amend its complaint to plead a claim other than those included in the original complaint. *See, e.g., Marmark Ltd. v. Nutrexpa S.A.*, 12 USPQ2d 1843 (TTAB 1986), *recon. denied*, 1 USPQ2d 1304 (TTAB 1986), and TBMP §507.02.

Inasmuch as this case was still in discovery when petitioner filed the motion to amend, and respondent has not shown that any undue prejudice would result from the amendment nor that the amendment would be futile, and because petitioner filed the amendment approximately one month after it learned of the additional grounds, the motion to amend is granted.

Respondent has until THIRTY DAYS from the mailing date of this order to file an answer to the amended petition for cancellation.

Trial dates, including the close of discovery,¹ are reset as follows:

¹ In its reply brief, petitioner states that it does not require additional discovery on the newly pleaded issues. Although respondent argues that it requires at least three months of discovery on the new issues, the new issues pertain to fraud and misuse of the federal registration symbol, facts solely within respondent's possession. Accordingly, respondent's arguments ring hollow.

DISCOVERY PERIOD TO CLOSE: **September 7, 2006**

Thirty-day testimony period for party in position of plaintiff to close: **December 6, 2006**

Thirty-day testimony period for party in position of defendant to close: **February 4, 2007**

Fifteen-day rebuttal testimony period to close: **March 21, 2007**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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